APPENDIX TO APPELLANT'S BRIEF NO. 7448

TESTIMONY

(St. Tr. 6-11):

THOMAS B. CARNEY,

was called as a witness for and on behalf of the defendant [sic. Government] and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name.

(The Witness) Thomas B. Carney.

DIRECT EXAMINATION

By Mr. Pierson:

Q. Where do you live, Mr. Carney? A. 745 Charing Cross Road, Baltimore, Maryland.

Q. And by whom are you employed? A. District Director of Internal Revenue, attached to the Intelligence Division.

Q. Are you acquainted with the defendant in this case, Arold H. Ripperger? A. Yes, sir, I am.

Q. When did you first meet him? A. On or about November the 18th, 1955.

Q. And what was the purpose of that meeting? A. Mr. Ripperger had called at our office as a result of a letter directed to him concerning the filing of income tax returns.

Q. Did you discuss this matter with him? A. Yes, sir, I did.

Q. Was the interview that you had reduced to writing? A. Yes, sir, it was taken under oath.

Q. And do you remember that interview? A. Yes, sir, I am familiar with it.

Q. Would you glance at this and tell me what this paper is, Exhibit No. 3, I think. A. It is Exhibit 3 of the Special Agent's report, and it is the testimony of Arold H. Ripperger, taken in the office of the Intelligence Division, Baltimore, Maryland, on Friday, November 18th, 1955 at approximately 2 p.m.

(Mr. Pierson) I offer it in evidence.

Would Your Honor want me to read it or have the witness read it?

(The Court) Is the witness familiar with it? Are you going to ask him any more questions about it?

(Mr. Pierson) The witness is familiar with it, but he would simply summarize what the report says. I think the report would probably be more in detail.

(The Court) I think I better read it myself, then.

(Mr. Mundy) No objection.

(The Court) The defendants have seen it?

(Mr. Pierson) You have seen it?

(Mr. Mundy) Yes, we have seen it.

(The Court) If you would like to read it again, you can do it now.

(Mr. Mundy) I have a copy here, Your Honor. In one part of the statement, Your Honor, Mr. Ripperger says, as I recall it, he did not intend to take advantage of obligations, and we suggest, Your Honor, that a look at the context will indicate that it meant he did not intend to take advantage of limitations.

(The Court) That suggestion is made in the brief which you filed, and it seems plausible.

(Mr. Pierson) Yes.

(The Court) From the context.

(The Clerk) Government's Exhibit 1.

(Statement of Defendant before Special Agents dated November 18, 1955 was marked Government's Exhibit 1.)

Q. (Mr. Pierson) Mr. Carney, did you have any further interview with this defendant? A. No, sir, I didn't.

Q. Mr. Haspert was with you at the time? A. Yes.

(The Court) I have read it.

(Mr. Pierson) Witness with you.

CROSS EXAMINATION

By Mr. Mundy:

Q. Mr. Carney, at the time of this interview, Mr. Ripperger had none of his records with him, did he? A. No, sir, he didn't.

Q. And you took a statement from him the very first day he came into your office? A. Yes.

Q. He came to your office, and you took a statement from him before he left the office? A. That's correct.

Q. He was cooperative with you, I take it? A. Yes, sir, he was.

Q. And he assisted you in reconstructing his income for the years in question, 1953 and 1954? A. I can't answer that, Mr. Mundy, because I didn't participate in the investigation other than the original statement.

Q. Have you investigated as to how his income was reconstructed? A. Yes, sir.

Q. What is your knowledge on that? A. To the best of my understanding he turned over his available records to the Agent.

(Mr. Pierson) Will you speak louder?

(The Witness) It's my understanding that he turned over his available records to the Agents to compute his corrected income.

Q. (Mr Mundy) One of the Agents was Mr. Haspert, was he? A. Yes.

Q. Did you or Mr. Haspert write to the clients of Mr. Ripperger about any fees that had been paid to him during these years, referring to 1953 and 1954? A. I can't answer the question, Mr. Mundy, directly because I didn't write. It is my understanding that Mr. Haspert did write.

Q. After your Intelligence Division got into the case, were you in charge of the investigation? A. Substantially, yes.

Q. On some occasions, according to my information, Mr. Ripperger reported fees that were larger than clients informed your agents had paid him the fees; is that correct? A. I don't know.

Q. Did your investigation disclose that W-2's were filed on some occasions? A. I think Mr. Ripperger had received W-2's from some of his employers, yes.

Q. Would you know off-hand during what years W-2's were filed for him? A. No, I wouldn't know.

Q. You imposed a fraud penalty in this case, did you not? A. It hasn't been imposed as such; it has been recommended.

(The Court) Would you read that answer back?

(The last answer was read by the Reporter.)

Q. (Mr. Mundy) A fraud penalty is imposed, is it not when there has been an attempt to evade taxes? A. Wilful evasion or wilful — that's correct, yes.

(Mr. Mundy) May it please the Court, that's the only cross-examination we have at this time.

* * * * * * *

(St. Tr. 12-23):

PETER P. HASPERT,

was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name for the record.

(The Witness) Peter P. Haspert.

DIRECT EXAMINATION

By Mr. Pierson:

Q. Where do you live, Mr. Haspert? A. 19 North Wickham Road, Baltimore.

Q. You are associated with the Director of Internal Revenue, Baltimore, Maryland? A. That is right.

Q. In what capacity? A. As a Special Agent, sir, Intelligence Division.

Q. Do you know the defendant, Arold H. Ripperger, Jr.? A. Yes, sir, I do.

Q. Were you present at the first interview, the transcript of which has been offered in evidence? A. I was, yes.

Q. And did you subsequently interview the defendant? A. Yes, I did.

Q. Under what conditions? Just tell us what happened. A. Well, sometime in February Mr. Ripperger was supposed to bring in his records, and he came into the office, and at that particular time arrangements were made to go out to his house, his residence, and pick up the records in his residence.

Q. You did that? A. I did, yes.

Prior to going out to his house he was asked if he was aware that he could have filed income tax returns without remittances, and Mr. Ripperger stated that he was aware of that fact.

Q. What was the date of that? Do you have a memorandum of that in your report? A. I do, sir.

Q. Will you tell us the exact date? A. February 7, 1956.

Q. Was someone besides you and Mr. Ripperger present at that time? A. Yes, sir.

Q. Who was it? A. Mr. Wheeler.

Q. This gentleman here? A. Yes, sir, Internal Revenue Agent.

Q. You then went out and got the records? A. That's correct.

Q. And from those records did you and the defendant reconstruct his income for the years 1953 and 1954? A. We did, sir.

Q. What did you find his income for those years to be? A. The gross income for the year of 1953 was $6,694.19, and for the year of 1954, the gross income was $7,175.31.

Q. Did you have any further contact with the defendant? A. Yes, sir, we did.

Q. When was that and tell us the purpose of it. A. On various occasions, in reference to going over some of the fees and the clients that Mr. Ripperger represented, and in order to ascertain the correct amount of the fees received we went over the schedules that had been prepared by him and submitted by him.

Q. Do you have those schedules which he prepared and submitted to you? A. Yes, we do.

Q. Would you see if you can find them? A. Here they are, sir.

Q. These yellow papers are the schedules? A. They represent the schedules submitted by Mr. Ripperger.

Q. And whose handwriting are they? A. That is Mr. Ripperger's.

(Mr. Pierson) I offer these in evidence, Your Honor. I offer these schedules in evidence as Government's Exhibit No. 2.

(The Clerk) Government's Exhibit 2.

(Schedules of Defendant for years 1950 to 1954 were marked Government's Exhibit 2.)

(Mr. Pierson) Witness with you.

(The Court) Have you seen them, Mr. Mundy?

(Mr. Mundy) No, sir, but there is no objection to them.

(The Court) Do you wish to see them before you cross-examine?

(Mr. Mundy) I would like to take a look at them.

CROSS EXAMINATION

By Mr. Mundy:

Q. Mr. Haspert, what years do these schedules cover? Would you like to take a look at them? A. Yes. They cover for the years 1950, 1951, 1952, 1953, and 1954.

Q. And they are in Mr. Ripperger's handwriting? A. Yes, sir.

Q. And they show the fees that he received during those years? A. That is correct, sir.

Q. And did you make any independent investigation to see whether the schedules are correct or not? A. We did, yes.

Q. And did you find them to be correct? A. We did with the exception of possibly two or three.

Q. Two or three fees? A. That's correct.

Q. Did you find that his schedules understated his fees or overstated his fees? A. Well, let's see in — (referring to papers) —

Q. Well, Mr. Haspert, I did not want to put you to a great deal of trouble. Maybe we can do it simpler than that. You said that you found during those years, 1953, 1954, several inaccuracies? A. Well, I wouldn't say inaccuracies. In other words, Mr. Ripperger had probably reported income in 1953 which should have related to the year 1954, and vice versa.

Q. So it was rather a question as to in which income the income went than as to an understatement or overstatement of fees; am I correct in that? A. That's correct.

Q. And no other inaccuracies; is that correct? A. That's correct, sir.

Q. And he prepared those himself, the statements, the schedules? A. Yes, he did, sir.

(Mr. Mundy) Thank you very much.

(Mr. Pierson) That is all, Mr. Haspert. Would you just leave that here.

(The Witness) Yes.

ROBERT D. WHEELER,

was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name for the record.

(The Witness) Robert D. Wheeler.

DIRECT EXAMINATION

By Mr. Pierson:

Q. And your address, Mr. Wheeler? A. 3800 Beech Avenue.

Q. Would you keep your voice up so His Honor can hear you? You are connected with the Director of Internal Revenue, Baltimore, Maryland? A. That is correct.

Q. In what capacity? A. Internal Revenue Agent.

Q. And were you in that capacity connected with the interview of Mr. Arold Ripperger? A. I was.

Q. And did you calculate his tax liability? A. I did.

Q. For the years 1953 and 1954? A. That's right.

Q. What did you find that liability to be for 1953, and how was the figure made up with reference to the income figure? A. For the taxable year 1953, we found there was professional fees of $5,977.01.

(Mr. Mundy) May I have that figure, please?

(The Witness) $5,977.01.

Wages received as an organist, $1,546.68, making a gross income of $7,523.69. Against that there was office expenses allowed in the amount of $329.50.

Q. (Mr. Pierson) Where did you get that figure? A. That figure represented — our examination disclosed that the amount represented expenditures made for telephone, stationery and stamps incurred in the performance of his legal work.

In most cases they were expenses that Mr. Ripperger submitted to us that he had.

Q. You mean, you accepted his figures of expense? A. Yes.

Q. (Mr. Murphy) Is that for the year 1953? A. '53, yes.

Q. (Mr. Pierson) And that gave you a net income of what? A. That was a net income after allowing the standard deduction of $500, the net income of $6,694.19.

(The Court) You people have been calling that the gross income.

(The Witness) That's the net taxable income.

(Mr. Pierson) Net taxable income.

(The Witness) In other words, the liability is determined by that figure.

(The Court) Well, do you want to modify the stipulation to show that?

(Mr. Pierson) Yes, Your Honor.

(The Court) The net says before deductions, whereas I understand it is after exemptions.

(Mr. Mundy) Yes.

Q. (Mr. Pierson) Now, did you make any adjustments for differences in fees that were submitted, the amount that had originally been reported to you by Mr. Ripperger? A. The only exception we found to the records that he submitted to us and subsequently verified by furnishing the original records was that in one case a client had paid him fifteen dollars that he failed to include in his record, and in another case a client had paid it in 1954, and his records showed that he picked it up in 1953. So that it was simply an off-set of one year to the other.

I think the total discrepancy amounted to about fifteen dollars. That was the only discrepancy that we found.

Q. Wasn't there also an overstatement by him that you found of a fee from a client of thirty-five dollars? A. That overstatement was based on the fact that he had included it in 1953, but actually the taxpayer paid it in 1954, and he was on a cash basis.

Q. Would you check your records as to the accuracy of that? A. Well, here, I only have my—

(The Court) Well, as I understand it, this is relatively trifling, when he was asked to hand in schedules, he handed in schedules that were substantially accurate except for a few trifling discrepancies?

(Mr. Pierson) Yes.

(The Court) Which have no bearing upon the case.

Q. (Mr. Pierson) What taxes did you calculate for the year 1953 as being due under those figures that you just testified to? A. The deficiency based on a net income of $6,694.19 was $1,021.32.

Q. (Mr. Mundy) Is that the tax? A. That was the deficiency.

(The Court) Does the deficiency mean the total tax?

(The Witness) That's the tax liability that should have been reported.

Against that he had taxes withheld because of his services as an organist of $88.40, making it a net deficiency of $932.92 for the year 1953.

Q. (Mr. Pierson) Now, for the year 1954, what are your figures? A. For the year 1954, professional fees $6,551.93.

(The Court) Give me that figure again.

(The Witness) $6,551.93.

(Mr. Mundy) And 93 cents?

(The Witness) Ninety-three cents.

(Mr. Mundy) Thank you.

(The Witness) Wages as organist, $1,500.

Gross income $8,051.93. Business expenses allowed $376.62, making it a net taxable income, net income of $7,675.31, less $500 standard deduction, taxable income, $7,175.31.

Q. (Mr. Pierson) And on that basis, what was the tax deficiency? A. The tax deficiency was $1,041.58, and allowing taxes withheld of $179.10, making it a net deficiency of $862.48.

Q. At that time were there any returns prepared by anyone other than you with reference to this taxation? A. No, there were not.

(Mr. Pierson) Witness with you.

(Mr. Mundy) No questions.

(Mr. Pierson) That is all.

(Witness excused.)

(Mr. Pierson) That is the Government's case, Your Honor.

(Mr. Mundy) May we respectfully move for judgment of acquittal, Your Honor?

(The Court) That is denied.

AROLD H. RIPPERGER,

the defendant, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Mundy:

* * * * * *

(St. Tr. 26-56):

Q. During the year 1950 you were employed or had work in connection with St. Thomas Episcopal Church? A. That is correct.

Q. And a W-2 was filed by the Church for that year. You know that is correct? A. I know that is correct, yes.

Q. Showing wages earned of $1285? A That is correct.

Q. And income taxes withheld of $96.40. A. Whatever the form shows yes.

Q. And for the year 1951 you were employed by the same Church, St. Thomas Episcopal Church, and you earned that year $1320; is that right? A. That would be right.

Q And withholding tax of $108; is that correct? A. Yes

Q. And, for the year 1952 you were employed by the Eastern Woodwork Corporation and you had earnings of $800; is that correct? A. That is correct.

Q. And taxes withheld of $164? A. That is correct, upon my direction.

Q. Would you kindly explain how you happened to be employed by the Eastern Woodwork Corporation? A. Eastern Woodwork was a closely held corporation for which I had been counsel, officer and director since 1947, I think.

The guiding light of the corporation suffered a heart attack over in Washington on a particular Thursday, which took him off extensively, and the Board at that time constituted the president, who had had the heart attack, a chap who was the bookkeeper and office manager, and myself, and there was in the making a Government contract.

I had been named the Executor under the president's will, and it was imperative that this not be dropped. I took it upon myself to declare a meeting of the Board of Directors, and nominated myself as president, and one of the top foremen in the shop as vice-president, and the other member stayed as he was.

The salary that I immediately set up for myself because I knew that it was going to be a full-time proposition, and I immediately arranged that all phone calls from my law office be transferred to the office of Eastern Woodworking, and I actually maintained my office there, five or six days a week, whatever it demanded.

The only time that I was absent from that position was that I had one case that came up in the Court of Appeals, and I had to be off for that.

Q. Now, to interrupt you, who issued the order on behalf of Eastern Woodworking Corporation that a W-2 be filed for you? A. I issued it. I issued it. The bookkeeper asked me whether or not that was to be a legal fee, and I said, "No, sir. The business of legal fees would be discussed when the business was solidified."

We had too many other things to do, and in the meantime I would take a salary of one hundred dollars a week from which he should deduct such things as withholding and social security taxes.

He made a remark, "Well, that's going to take quite a bite out of your one hundred dollars a week."

I said, "That's the way it's going to be."

Q. Now, I would like to pass to another point. In your statement offered in evidence on behalf of the Government, dated November 18th, 1955, you were asked this question:

"During the period in which you worked for these various churches, did the pastor or someone in authority give you a W-2 for your earnings?"

Your answer was: "All except the complete period at St. Thomas. I would say it was at the very beginning of my retention there they adopted the attitude that they weren't going to make any withholding. In all other cases they did, and I have the W-2's."

Do you have any comment on your answer? A. Yes, I do.

Q. Was the answer correct or not? A. Not completely.

Q. W-2's were, in fact, filed by St. Thomas for you, were they not. A. Yes, they were.

Q. When you gave this statement, did you have any records in your possession in the offices of the Agent? A. No, sir.

Q. You received a letter from Internal Revenue a day or two before this statement was taken; is that correct? A. I think I received the letter on the fifteenth.

Q. And you went to the office of the Internal Revenue, I suppose Intelligence Division, and before leaving that date a statement was taken from you; is that correct? A. That's correct.

Q. Now, passing on to other years, in 1953, you were employed by St. Thomas Church and you earned $800; is that correct? A. That's correct.

Q. And no tax was withheld that year? A. Well, if the record shows not. That was the confusion in the statement, if I may explain that.

Q. In other words, when you said that W-2's were not filed, what you meant to say was that for a certain period, St. Thomas did not withhold any tax; is that correct? A. That is correct because the Reverend Lynch, who was then the rector said that they were not going to do it but they would file a year-end return, and I told them, I made some remark, that I wish they did, but that I was not going to be one to tell the church how to run its business.

Q. During the year 1953 you were also connected with the Church of the Incarnation? A. That is correct.

Q. And you had earnings there of $666.68 for that year; is that correct? A. I think that is about correct.

Q. And taxes withheld of $88.40? A. I think so.

Q. And in 1954 you were connected also with the Church of the Incarnation and you had earnings of $1603; is that correct? A. That is correct.

Q. And taxes withheld of $179.10. A. That's correct.

(Mr. Mundy) We would like to offer in evidence the W-2 forms just referred to by the witness. I think they are for the years that the witness has referred to.

(The Clerk) W-2 Forms, Defendant's Exhibit 1.

(W-2 Forms for years 1950 to 1954 were marked Defendant's Exhibit 1.)

Q. (Mr. Mundy) You referred to a communication from the Internal Revenue Service to you in 1955 preceding the date upon which the statement was taken. Is that the letter that you had in mind? A. That's correct, sir.

Q. That is the letter from the Internal Revenue to you dated November 14th, 1955? A. That is right.

Q. Did you also receive a letter from Mr. Greenland Intelligence Division, dated June 4th, 1956? A. Yes, I did.

Q. Is that the letter? A. That is the letter, yes.

Q. Did you also receive a letter from the Internal Revenue Service, Regional Office, Philadelphia, dated August 17th, 1956? A. Yes, sir, and that is the letter.

(Mr. Mundy) May it please the Court, we offer in evidence the letters referred to by the witness, that is the letter of November 14th, 1955, the letter of June 4th, 1956 and the one of August 17th, 1956.

(The Clerk) Defendant's Exhibit 2-A, 2-B, and 2-C.

(Letters above referred to from Internal Revenue to Defendant were marked Defendant's Exhibits 2-A, 2-B, and 2-C.)

(The Court) May I see them?

Q. (Mr. Mundy) During the years in question, Mr. Ripperger, what was your understanding of what happened to the W-2's that were filed by an employer for an employee? A. Well, other than the fact that they went to the District Office where I should file my returns and pay my taxes, nothing; that's all. I didn't know anything about the precedure.

Q. Wasn't there a conference set up at the Baltimore Office for you? A. You mean other than the one in November of 1955?

Q. Yes. A. That is right, sir. There was the June 14th letter of 1956.

Q. What happened with reference to that conference? A. Well, I had the letter, and there was a similar letter addressed to my wife.

Q. That was June 1956? A. I think it was '56.

(The Court) One of the letters which you offered in evidence, Mr. Mundy, was a letter of June 4th.

(The Witness) June 4th, 1956.

(The Court) Giving him an opportunity to come in with counsel in view of the fact that criminal proceedings were being considered.

(Mr. Mundy) Thank you, Your Honor.

(The Witness) These came by registered mail, one to my wife and one to me, and when I got to the office that morning, I immediately called Mr. Haspert, and I suggested that on June 11th, which was the time designated in the letter that I had an engagement with the client.

I don't recall whether I had a trip to Washington — I think it was — because I had a client who has been engaged on some contract work, and that thing had been going on for several years, and it looked like we were about to make some progress, and I asked Mr. Haspert at that time, two things.

First of all, would it not be possible to postpone or get another date other than June the 11th; and secondly, generally what their attitude was what I would have to have by way of new evidence.

And Mr. Haspert at that time sort of agreed tentatively on June 18th, which was the following week because the rest of the week he had some things to do, or the gentleman with whom he would have had to do anything with me was occupied, and he said, "Tentatively, let's put it down for June 18th."

And I asked him why there was any suggestion of criminal liability on the part of my wife because I had never been under the impression that I was responsible criminally although since the investigation got under way I was made aware of it, although I never had any idea in my own mind, but certainly there was no reason why Mrs. Ripperger should be involved.

Q. And you set another date for a subsequent conference? A. That is correct.

Q. And the other date was June 18th? A. That is correct.

Q. Did Mr. Haspert agree to that? A. He agreed, I understood he agreed to the postponement because we agreed on the telephone on a tentative date of June 18th.

Q. Did you have a conference on June 18th? A. No, we did not.

Q. Tell us why not. A. Well, it was either later the same day that I talked with Mr. Haspert or the next day —I forget which — he called and I was not in the office, and he said, left word that it was not necessary for me to come over, that we weren't going to have the conference.

My secretary took the message, and that was that.

I called Mr. Haspert and asked him what happened, and he said, Well, I had indicated I had no new evidence, but I certainly wanted to avail myself of all opportunity because this was a very serious thing, and he said, well, they had decided it was not necessary, and the matter then would be referred to Philadelphia, and I would have an opportunity to go to Philadelphia and discuss the problem with the Regional Office.

So that letter was — I mean that June 18th appointment was canceled, and there never was any other scheduled.

Q. Now, these conferences at the Regional Office in Philadelphia, as I understand it, are on the record as being prepared by the Local Office; is that your understanding? A. I was so advised by the gentleman who interviewed me there.

Q. I show you a memorandum of a telphone call, dated June 11th without the year, and ask you what that is. A. That is the secretary — that is a telephone message from my secretary to me, which the initials "AHR" are mine, from Mr. Haspert with the remark that it won't be necessary to keep appointment next Monday. That was the ap-

pointment that had been scheduled after I received this June 4th, 1956 letter.

(Mr. Mundy) May it please the Court, we offer in evidence the memorandum dated June 11th.

(The Witness) The initial M is in regard to the secretary's name, which is Barbara Ann Matter.

(The Clerk) Defendant's Exhibit 3.

(Memo, telephone call dated June 11th was marked Defendant's Exhibit No. 3.)

Q (Mr. Mundy) Mr. Ripperger, what was the nature of your law practice? A. It was general practice.

Q. Did you specialize in any particular type of law? A. No, sir, I have a particular fondness, but I never specialized in anything.

Q. Did you do real estate work? A. I did real estate work. I prepared some wills. I tried negligence cases, contract cases on both sides of the fence, so to speak; prepared some wills; administered or helped administer some estates, and I did a few tax returns, I guess, over a period of years, they would average about five or six, once a year.

Q. During the years 1949 through 1954, while you were in the practice of law, did you have a secretary of your own? A. In the latter part of it — I don't know the exact years, sir — I had a sister who was employed at a law office in town, and she would do some of my work for me at home, for which I reimbursed her direct, but I had no full-time secretary, no, sir.

Q. Who did your secretarial work? A. I did.

Q. You did? A. Yes.

Q. Your overhead item figure seemed to run about three hundred and fifty dollars a year. A. Well, that is about right, such things as transportation where I would use my automobile, my wife's automobile, actually, for business. I never kept a record of that.

Q. You had stationery, telephone. A. Yes, things like that, that's correct.

Q. According to my information during the year 1949 you earned approximately $3900. Would that be about right? A. Yes, that's about right.

Q. Then during the year 1950 you earned about $3300 or $3400? A. I think that is right, yes, sir.

Q. In 1951 you earned approximately $5300? A. I think that's right.

Q. In 1952 you earned approximately $9,000? A. Yes.

Q. These are gross figures. In 1953 you earned about $6,694; is that correct? A. Yes.

Q. And in 1954, you earned a gross of $7,175.31.

(The Court) Well, that has turned out to be net.

(Mr. Mundy) Yes.

(The Court) Or gross after expenses. The total gross was $8,376, and business expenses were $500, is what made it $7,175.

Q. (Mr. Mundy) Now, during all the years 1949 through 1954, W-2's were filed for you; is that correct? A. That is correct.

Q. And in order to reconstruct your income, was it necessary for you to go through all your old files? A. It was, yes, and I did.

Q. You had some of them at home; is that correct? A. Frankly, all of my old files except those that had some continuity to them year to year were at home. I kept them stored in my attic, and some of them I had in boxes in my barn.

Q. Was it necessary for you to spend much time in reconstructing your income for the years 1949 to 1954? A. I would say total-wise about thirty hours, I guess. It seemed longer than that because it was not all done at

once, but I think if you boil it down it was about thirty hours.

What happened was that I simply went through the files, and had the columnar sheet which you have there, I marked down columns for five years.

I had a column for '50 to '54, and my records for 1949 were in a book, which I gave to Mr. Haspert, and I don't know whether he verified this with my clients or not, but I think I gave him the '49 files, but the five years, '52, '53, '54, I made those up by going through the files.

(The Court) You didn't keep a cash book?

(The Witness) No, sir.

Q. Mr. Mundy) After you returned from the Navy, did you and your wife take a vaction? A. In 1948 we took a vacation. That cost us about sixty dollars for one week.

Q. That was in 1948? A. Yes.

Q. Did you have any other vacation? A. In 1952 we went up to New York for two days.

Q. To New York for two days? A. Two days.

Q. Any other vacation? A. And there was one year — I forget — I think it was '53 or '54, my wife went to go visit one of her relatives out in Illinois, and we drove out there and stayed with them for a week. We had no expenses particularly. We drove out and stayed with them.

Q. What year was your last child born? A. We had the third daughter in January 1951, and we lost a boy at birth in November 1951.

Q. The daughter was born in the early part of 1951, and that daughter is still living; is that correct? A. That's correct.

Q. And you lost another child at birth in the latter part of the same year, is that correct? A. November 19th.

Q. What sort of work did your wife do during the time she was employed? A. She was secretary to her father's business, that is, awnings, shades, and venetian blinds.

Q. Who would take care of the children while she was working? A. We had a housekeeper that watched them for part of the time, and my wife paid her out of what my father-in-law paid my wife, whatever that was, and then for some time when there was no housekeeper available, she would have the children with her down at the shop.

(Mr. Mundy) May we have just a moment, Your Honor?

(The Court) Yes.

Q. (Mr. Mundy) I show you a monthly bank balance with your name on it, Fidelity-Baltimore National Bank for the period January 30th, 1953 to April 30th of 1955. Maybe you are not familiar with it. Are you? A. Let me take a look at it.

(Mr. Mundy) May it please the Court, I offer in evidence the paper that I have just mentioned by way of stipulation. It shows monthly bank balances, may it please Your Honor.

(The Court) What sort of account was that?

(The Witness) It's an attorney's account.

(Mr. Mundy) His Honor asked what sort of account it was. This is an account that was in the Fidelity-Baltimore National Bank.

Q. (Mr. Mundy) Is that correct? A. That's correct.

Q. And it is called an attorney's account; is that correct? A. Yes.

Q. Was that the only attorney's account that you had? A. That's the only account I had in my own name.

Q. That's the only account you had in your own name? A. Yes.

Q. Now, for the years covered by the information, I notice, just to take a few at random, that in January your balance was $944.12. In February—

I will hand this to Your Honor in a moment.

In February $483. July is the highest figure, $1,514.24, and possibly December is the lowest figure, $129.

Did you ever keep any substantial amount of money in this account? A. Well, it depends on collections. I mean sometimes the collections from clients were a substantial amount. I have had better than $10,000 go through the account on real estate.

Q. I am sorry. Perhaps my question was phrased badly. Did you ever have any substantial amount of your own money in this account? A. I guess I did, at one point or another. I would have to look through that and say when I did and when I didn't. At some times I did, but I don't know exactly when those times were.

Q. Well, do you ever maintain as a regular thing a large amount of your own money in this Fidelity-Baltimore National Bank account? A. No, sir, I did not.

Q. Well, what would be the average of your own money in this account? Was it $50, a hundred, two hundred, or how much? A. It might be about two hundred or three hundred. That's on the average.

Q. And much of the money that went into this attorney's account was client's money; is that correct? A. That is correct.

(The Clerk) Defendant's Exhibit 4.

(Monthly bank balances, attorney's account, was marked Defendant's Exhibit 4.)

(The Witness) May I add to that that that was a special checking account and not a regular bank balance, not a regular checking account. That's an account where you buy books at so much for twenty checks, and I never had a regular checking account because I never could count consistently on having enough.

(The Court) This is a special checking account?

(The Witness) That's correct. I just figured that that was cheaper than having to pay bank charges for not having the minimum balance that would be required from time to time.

Q. (Mr. Mundy) Did you have any annual retainers from your law practice? A. One.

Q. That was Eastern Woodworking? A. Eastern Woodworking. That was three hundred dollars a year, which didn't have any specific time for payment.

Q. Is that the only regular money which you had coming in? A. That, and the church.

Q. And the church? A. Yes.

Q. It is admitted by you, as I understand it, that you filed no returns for the years 1949 through 1954; is that correct? A. That is correct.

Q. And it is my understanding that the last return you filed was for the year 1948, filed in 1949; is that correct? A. That is right.

Q. Now, recently, while you have not filed returns, you have paid the taxes, exclusive of interest and penalties, for the years 1949 through 1956; is that correct? A. That is correct.

(Mr. Mundy) We offer in evidence, may it please the Court, a letter from Mr. Sharretts to the Director of Internal Revenue, dated April 19, 1957.

(The Clerk) Defendant's Exhibit 5.

(Copy of letter, Sharretts to Director of Internal Revenue, April 19, 1957 was marked Defendant's Exhibit 5.)

Q. (Mr. Mundy) I believe the total taxes paid on that letter, the total taxes according to that letter of April 17th, 1957 was about $4700. Now, I ask you whether it was necessary for you to borrow that money — I don't want the name of the person you borrowed it from — but my question is whether it was necessary for you to borrow that money? A. Yes, it was.

Q. Why didn't you file income tax returns for the years 1949 through 1954? A. Because I was under the impression that when — from reading the instructions, that when the returns were filed, the taxes had to be paid.

It said so there, and there was an article in the paper, just a week or so ago that said the same thing, and I didn't have that money at the time to pay the taxes.

Q. I show you a booklet issued by the Internal Revenue called "Helpful Information on How to Prepare Your Income Tax Return on Form 1040 for 1956."

Now, will you please point out the part of that instruction which led you to believe that you had to pay your tax when you filed your return? A. The part which I have underscored there.

Q. Read that part, please. A. It is under the hearing "How to Pay."

"Any balance of tax shown to be due on line 18, page 1, of your return on Form 1040 must be paid with your return."

Then there is how to make the check payable.

(Mr. Mundy) We offer in evidence the form just referred to by the witness, designated "Publication III (Rev. 9-56.)"

(The Clerk) Defendant's Exhibit 6.

(Pamphlet "How to Prepare Income Tax Returns" was marked Defendant's Exhibit No. 6.)

By Mr. Mundy:

Q. Mr. Ripperger, on page 6 of the statement which you gave on November 18th, 1955, the question was asked:

"And because of lack of funds, you didn't file?

"Answer: That is the thing, sir. I have never adopted or expected that theory of obligations would apply under any circumstances."

Did you say "obligations" and if so, did you mean "obligations"? A No. I will answer it—

Q. Well, just specifically, what word did you mean? A. Limitations. I not only meant it, I said it.

Q. What word? A. Limitations. I said it.

Q. Did you have any intention of evading any income taxes for the years 1949 through 1954? A. Not for any year and not for any time.

(The Court) He is not charged with that.

I mean, he is not charged under 145(b).

(Mr. Mundy) All right. Well, of course, Your Honor, the reason I asked the question was under our theory it is pertinent. I know that the Government does not agree with us, but I thought I should get the factual situation. That was the reason.

Q. (Mr. Mundy) Did you have any intent to deceive the Collector as to the existence or extent of the tax liability? A. No, sir.

Q. For the years 1949 through 1954? A. No, I didn't.

Q. Did you intend to pay your income taxes for those years? A. I did whenever I had the money which I would make out of the practice of the law, for whatever the obligation was at that time, to go down and say "This is it." Which I did, and I have never been without that intention.

Q. Did you know during the years 1949 through 1954, through March or April the 15th, 1955, did you know that there was any criminal responsibility for not filing returns, income tax returns? A. No, I would say not.

Q. What kind of responsibility did you think you were under? A. Well, frankly, I never thought that I was under any specific kind of responsibility, except that I knew that I had to pay those taxes when I filed the return because the form says so, and undoubtedly there would be some interest or penalty charges.

I did not look at the law to familiarize myself with it. I never had that kind of practice tax-wise, and therefore I never acquainted myself with it.

Unfortunately I always practice law on the basis of acquainting myself with the problems which were at hand.

Q. As I understand your answer just made, you thought that you had to pay the taxes when you filed the return; is that correct? A. That is correct.

(The Court) Did you take a course in taxes at the University of Baltimore Law School?

(The Witness) No, Your Honor, I didn't.

(The Court) They didn't teach taxes there?

(The Witness) I think that at the time I was there, at the best it was an elective, we had — it was administrative law that we were given.

We did not have the course in taxation in my curriculum. I was in the Class of 1940, and the tax practice had not gotten to the point inasmuch as they were not included in the curriculum there.

I think that within that period they started their Master of Laws course. That is between '37 and '40, and the tax subject was included in the Master of Laws curriculum.

Now, in 1955, I think it was, when the 1954 Act came along, the Eastern College of Commerce had a Seminar at the Peabody Conservatory.

That was simply with regard to technical details. It had nothing to do with criminal sanctions or civil sanctions, and I did attend that course with Mr. John Farrell at the time we were associated.

(The Court) A seminar course where?

(The Witness) I think it was the Eastern College of Law, sponsored it, and it was an elective, and they held it at one of the halls in the Peabody Conservatory.

(The Court) How long did that course last?

(The Witness) It think it was about six weeks. It had relation strictly to business law, and there was no discussion of forms, sanctions, or anything of that sort.

Q. (Mr. Mundy) Was it a course in taxation? A. Well, it was designed just to emphasize—

Q. Not what it was designed for. What was it? A. It was a course in taxation, but it dealt only with changes in the 1954 Act, and it presumed a tremendous amount of information from the 1939 Act, which I did not have.

Q. Mr. Ripperger, withholding taxes are filed quarterly, are they not? I am getting back to your W-2's.

(The Court) You mean W-2's that somebody else filed?

(Mr. Mundy) Yes.

(The Court) On income paid to him?

(Mr. Mundy) Yes, by the employer, they are filed, as I understand it, annually.

Q. (Mr. Mundy) Is that correct? A. That is correct.

(Mr. Pierson) Yes.

Q. (Mr. Mundy) And the taxes withheld are filed quarterly? A. I understand that, yes.

Q. And the taxes withheld are paid by the employer to the Director of Internal Revenue? A. That is correct.

Q. During the years 1949 to 1954, were you of the opinion that there was an account set up in your name in the Collector's Office as a result of filing your W-2's? A. Just an opinion, yes.

Q. What is the answer? A. Yes.

(Mr. Mundy) Witness with you.

CROSS EXAMINATION

By Mr. Pierson:

Q. It is true, Mr. Ripperger, that you told Agent Haspert that you had no additional evidence to submit? A. I said that I wouldn't know what I could do by way of additional evidence because in the very first instance and in the ensuing conferences that Mr. Haspert and Mr. Wheeler had with me, that I thought I had said everything that I had to say.

Q. You told them the whole story? A. I figured that I had, but at the same time I also told Mr. Haspert that I didn't want to foreclose any right which I would have because this was a very serious matter, and my livelihood at the Bar, for whatever it is worth, was at stake, and I didn't want to lose it.

Q. Now, you said you got a book for 1949? A. Through.

Q. For the years? A. That's right. Mr. Haspert had that book. My files were in such order reasonably that there was not too much doubt as to my income. That is, I would say it this way: To me there was no doubt that I could go through it, as I did within thirty hours, and somebody who is unfamiliar with my system probably would have taken longer. But the evidence was there that I had collected fees that I had earned at so much money.

It was also reflected, or would be reflected in the check book, you could see what transactions I had collected, and what I had paid out, so there wasn't any confusion or there wasn't anything hidden.

(The Court) Do I understand that in your account there that you deposited all fees that you received in your bank account?

(The Witness) Yes. As I said, I was asked that by Mr. Haspert and Mr. Wheeler.

(The Court) Including cash fees that you received?

(The Witness) I said practically all, Your Honor. I tried — I never had enough to do it consistently, but I tried to get a weekly draw-off of thirty or forty dollars, and occasionally a client would pay me on Friday, when I would draw it, and if the check book was seventy-five dollars, I would deposit twenty-five dollars as cash, and I would have fifty dollars for living expenses for the week.

That did not happen, I would say, any more than ten percent of the times. So that to answer your question, all money which I got as fees went into that banking account, yes, sir.

(The Court) Are those books here?

(The Witness) They were available to Mr. Haspert, and he returned them to me, the check books.

May I just explain something about reconstructing the income?

When I had this interview on November 18th, 1955, with Mr. Carney, and Mr. Haspert was there, he had very little to say. Practically all the questions were by Mr. Carney, and at the conclusion of that, I said to Mr. Carney, "Well, now, am I supposed to stop the practice of law, as this is a serious thing that you are attempting to charge me? Am I supposed to stop the practice of law?"

He said, "No, go on as you are, but we would like you to help reconstruct the information and get it to us as quickly as possible", and I said I would be delighted to do that.

So these sheets which Mr. Haspert put in here, as I said before, I made up, by going through my files, and the holiday came in, Thanksgiving Holiday came in, and Christmas Holiday came in, and I had about half of my work done. I guess about seven or eight of those pages were completed, and around February, Mr. Haspert called me one day and said could he have some of the files on which I had worked.

I said I would be delighted. My car was down in front, and we could go out, and he said, "No, come and go in my car", which was very nice. So he and Mr. Wheeler and I went out to my home.

I called my wife before hand to let her know that we were coming because she does not like me to bring people in if she thinks the house is untidy.

I had three or four boxes of files down in my dining room, and I went upstairs to the attic and got the rest of my files, and they were not all of the files which had been worked on at that time, and I asked the gentlemen did they want me to get each individual file, and their answer was no.

And then as I continued to bring the files up to date, some of them I took down, but again not all of them, and I took the sheets over daily or every other day, and it was at that time in February, I think it was, when the gentlemen went to the house, it was at that time that I gave them my check books, or around about that time, after I had gone through it.

And then some months after they were completed, they had completed their part of the work, Mr. Haspert and Mr Wheeler, or another gentleman brought the boxes over to my office.

Q. (Mr. Pierson) That is how you reconstructed it from the files? A. That is correct. It was there.

Q. Then from 1949 to 1954 you had not prepared returns for those years? A. No, but I had the information where I could get to it.

Q. You were going to? A. In 1949 -- now, I will say this — in 1949 I had a return prepared.

Q. You did have a return? A. Yes, sir, but I looked for it and I cannot find it. I made that remark to Mr. Haspert and Mr. Wheeler, I think. Now, I don't know if I had a typed copy which I gave them.

I may have. I looked for it — I cannot — I have a file which shows work sheets and everything like that.

Q. So in '49 when you prepared this return, you did know what your tax liability was, but from '50 through '54 inclusive you did not know what your tax liability would be? A. Well, I didn't know to the nickel, Mr. Pierson, but I had an idea.

Q. You had an approximation? A. I had an approximation, yes, but it was such that these fees which came to me from time to time were never enough that I could pay the whole thing off at once.

(The Court) Why didn't you file a quarterly withholding or pay it quarterly?

(The Witness) Quarterly withholding?

(The Court) Yes, I mean the estimated return.

(The Witness) Well, because I didn't have the money, sir, and I thought you had to pay the money when you had the return, but I have since learned it is different, but when I learned that, that's when I got that letter, and talked to somebody about it.

(The Court) You say you never had the money to pay it all at once, but the law does not contemplate that you pay it all at once. The law contemplates that you pay it quarterly.

(The Witness) Well, I did not understand the law in that fashion.

(The Court) You didn't understand about quarterly estimated returns?

(The Witness) No.

(The Court) You made out returns for other people and didn't understand what the quarterly estimated returns were?

(The Witness) That is right, sir.

Q. (Mr. Pierson) You did tell Mr. Haspert, though, that you knew you could have filed without paying? A. I didn't. My recollection is that I didn't say it like that. My recollection is that I said I know it now, at the time this thing, these things came up, I didn't know it.

I may have just said it in that fashion, but that is not the intention of it.

(Mr. Pierson) That is all.

(Mr. Mundy) Step down, Mr. Ripperger. That is all.

* * * * * *

(S. Tr. 64-68):

(The Court) I don't think it is necessary for me to hear from the Government at this time.

As counsel know I went over part of this ground very recently in the Jones case, at which time I read the Spies case and Murdock and many of the other cases. I have read everything that was in the defendant's brief and I have read all the material parts of the opinions and charges that have been handed up to me.

After I received the defendant's brief on Saturday I read it and gave more thought to it and read the Spies case again, the Yarborough case and the Murdock case, and re-read the Murdock case as recently as lunch time in order to be sure I had it clearly in mind.

I make the following findings of fact:

The failure to file the return for both years was voluntary, purposeful, deliberate and intentional, and not accidental, inadvertent or negligent.

I find that the defendant knew that the returns ought to have been filed and that he deliberately failed to file them so that the Government would not know the extent of his income and of his tax liability.

Whether it is necessary that there be an actual tax liability need not be decided in this case since it is admitted

that there was such a liability for both the years in question.

Spies v. United States indicates that an actual tax liability is not necessary if the tax return was due under the terms of the law in order to support a prosecution under 145(a) and 7203, and in appropriate cases the language of the charge would vary.

I do not mean to say that every word said in the Yarborough would apply to every case in the future; but I am making the point that the charge must be based on the facts in a particular case, as this case must be based on the facts in this case.

I find that the failure to file was without justifiable excuse. It is not necessary for the Government to prove in a case under Section 145(a) or 7203 that the defendant intended or attempted to evade or defeat the payment of taxes permanently.

I do not think it is necessary for the Government to prove in a case under 145(a) or 7203 that the defendant intended or attempted to evade the payment of taxes indefinitely or at all; but if the Government did have such a burden I find that it was met in this case.

That is a natural inference from the evidence in this case and no other motive or purpose has been suggested.

The reason why the defendant did not file his tax returns, namely, that he did not have the money to pay the taxes is not a legal excuse, as has been held in many cases. I find as a fact that the defendant knew that he had to file a return whether or not he paid the tax, and he knew that he could and should pay the estimated tax quarterly in advance. The defendant says that he relied on the language in the instructions.

The form offered in evidence was for the year 1956. I suppose similar language appeared in other instructions.

"Any balance of tax shown to be due on Line 18 Page 1 of your return on Form 1040 must be paid with your return."

He also said that he did not know that he was obligated to file the estimated returns and did not know that he could and should make quarterly payments. I find it incredible that a man could have read the returns and instructions closely enough to find the portion quoted above and yet not have discovered even from looking at the return itself that it contemplated quarterly payments in advance of the estimated tax; so that I don't find that was the reason he did not file his returns, especially since the defendant as a part of his general practice made out tax returns — perhaps in not very great numbers — for other persons, and had included in his practice some fiduciary duties, as was described by Mr. Bregel and by the defendant.

Accordingly, despite the fact that I recognize that the Government has a heavy burden in proving such a case as this, it has proved beyond a reasonable doubt that the failure to file the returns was willful.

Despite the fact that I have given close attention to any other explanation of defendant's conduct from the evidence which would not amount to willfulness, I am bound to find in this case that the defendant was obligated to file the returns, that he did not file them, and that such failure to file was willful within the meaning of Section 145(a) where it applies, and with respect to Section 7203 where it applies.

I therefore must find the defendant guilty on both counts.

If the defendant intends to take an appeal I will go over this more carefully and consider whether it is necessary to amplify the findings, and I will look over your requests for instructions; but I have read them and I have given effect to some of them, and with respect to the burden of proof I have made clear what the Government must prove.

I do not think that you can pull individual phrases out of an opinion, as some of your requests for instructions do,

and pin down the burden on the Government in this case to prove one particular element or one particular way of proving wilfulness and say that they must prove that when they may have proved other alternative avenues of reaching the same conclusion.

So the verdict must be guilty on both counts.

SENTENCE

(The Court) This Court has no jurisdiction over that general practice in the State of Maryland. The Court will file an order to show cause why he should not be disbarred from the practice of law in this Court, which I would not undertake to dispose of myself, but that will be heard by at least two Judges. There are precedents, of course, which the Court is aware of, as counsel for the defendant are aware of, in the State of Maryland. The Court has those in mind, but it is not for this Court to dictate to any other Court, although the Court should take into account the probable consequences in fixing punishment.

I have read Dr. Guttmacher's report, and I think it explains clearly the background that I have not had up to this time.

In view of Dr. Guttmacher's report, and the great confidence that I have in Dr. Guttmacher; the fact that it appears to be a thorough report covering all of the aspects, this Court does not feel that it is necessary to have any further medical examination. The Court does not feel that it is necessary to have any Probation report.

I accept everything that the character witnesses have said here today. There is nothing which a Probation report would show more favorable to the defendant than has been brought out by these character witnesses, who know him better than a Probation Officer could in such a short time, whose obvious sincerity convinces the Court of the regard in which the defendant is held in the community.

The hardest thing that any Judge has to do is to impose a sentence where the sentence falls more heavily upon the family than it does on the defendant.

I have thought about this case a great deal during the past week. It is even harder when the family includes people whom you have known for many years, for whom you have great respect, and makes the knowledge of the effect of the punishment more personal, although probably no more real than in other cases.

I agree with Mr. Mundy that there are various classes of fault in the non-filing cases, and that this is not a case where the failure to file was because of any improper activity on the side or because the person was accumulating money and was trying to hide it away.

On the other hand, it was, as I found, a deliberate and wilful failure to file which started for the reason very clearly set out in Dr. Guttmacher's report, which is inappropriate to refer to further except that, of course, counsel have read it.

They are not extenuating circumstances. They do show that it is not one of the more serious cases.

Mr. Mundy referred to the different elements that a Judge must take into account in determining what is to be the punishment in the case. He mentioned what he called the vengeance motive. I hope it is not necessary for me to say that I have no such personal feeling, and I don't think that that is an element which society has sufficient interest in to require the Court to give it any effect in this case.

In all of these income tax cases, a very important element is the one which Mr. Mundy mentioned, the deterrent effect upon others. The whole administration of the income tax law depends upon people filing returns and filing honest returns.

We do not have a group of Internal Revenue Agents coming into our house every year and going through our papers and questioning what we have been doing.

The Government relies upon its citizens to make returns when they should make returns and to make honest returns.

They are checked for the protection of all the people who are earning money and paying their taxes. They are checked on the basis that we all know, a certain number of returns or a certain percentage of returns in different classes of cases are checked.

But the system, as the Supreme Court has said, relies upon the performance of this important duty of citizenship by each person.

Now, no one knows that better than a lawyer. No one is or should be more conscious of that duty and the reason for it than a lawyer.

There are many people who do not like to pay income taxes. There are many people who would not pay taxes nor file returns if they did not fear punishment. I think we all know that, and in many cases, unfortunately in most cases, the only real punishment that can be given is some term of imprisonment because usually the person either hasn't saved any money, and is not going to be able to pay a fine or pay the taxes, and if somebody lends him the money to pay the fine, somebody else is paying the penalty for the person, or they have sufficient amount of money that the payment of the fine in addition to what they have withheld doesn't amount to anything.

Now, I am very conscious that the additional penalty which a lawyer must or may suffer, as Mr. Mundy referred to, is something that ought to be taken into account to him in all fairness, but the income tax laws apply to business men and lawyers equally, but if business men are to be sent to jail for the failure to pay income taxes, as this Court has pretty regularly done, unless there were exceptional circumstances, a decent respect for the administration of justice means that the courts cannot treat differently the lawyers whom they know, on the one hand and the business man whom they do not know on the other hand

If that were done it would destroy the respect of the citizens for the courts.

Because of the fact that the punishment for a lawyer is greater than the punishment for other men, and because the fact that this is not one of the most serious types of cases the Court will make the sentence as short as any sentence I have ever given in one of these cases, namely, three months.

I feel also that the financial penalties that come to a lawyer make it proper not to put any further additional financial burden on the defendant and on his family. So I will not impose any fine in this case.

Mr. Ripperger, will you stand?

JUDGMENT APPEALED FROM

The sentence of the Court on each count is that you be committed to the custody of the Attorney General for confinement in such place as he deems proper for a period of three months.

The sentence is in each count to run concurrent, there being no fine imposed.

(Mr. Mundy) Your Honor, may I take up just another moment?

(The Court) Yes.

(Mr. Mundy) First off, Your Honor, I want to thank Your Honor for a very fair trial that we had here a week ago.

I might say, Your Honor, that an appeal will be taken. Would Your Honor care to fix bail pending appeal at this time? I suppose the bail on which this young man is out now expired with his appearance in Court today.

I know Your Honor is familiar with Rule 46(f) which was changed, I believe, in June of last year, now liberalizing the Rule as to bail pending appeal.

(The Court) I understand that in order to deny bail pending appeal the Court has to find that there is no substantial point.

(Mr. Mundy) I think the Court has to find that the appeal would be frivolous.

(The Court) The Court did not arrive at the verdict without giving every consideration to all the questions which were presented very ably by counsel for the defendant both on the facts and the law, but I certainly would not undertake to say that any point urged by counsel for whom I have such great respect was a frivolous point. For that and for other reasons I do not find the point to be a frivolous point.

Therefore, the Court will admit the defendant to bail pending appeal, particularly since the sentence would be served substantially before the appeal could be heard.

Can you agree upon the amount of the bail, or do you want the Court to fix it? Of course, the Court has to fix it, but I will be glad to hear your recommendations.

(Mr. Pierson) I think $5,000 would be a proper bail.

(The Court) Mr. Mundy, that is the figure that the Court had in mind.

(Mr. Mundy) Your Honor, we won't demur to that. Of course, if we run into any difficulties we can confer with the United States Attorney or come to Your Honor, but we will try to make that.

(The Court) I will sign an order fixing bail as soon as the appeal is entered. There should not be, of course, any delay. It should be entered promptly. I will sign the order after the appeal has been entered.

(Mr. Mundy) Your Honor, at some time may we confer with the United States Attorney and with Your Honor as

to the rulings on our requests for instructions. I don't want to be too tedious this morning, Your Honor, but I think that in the oral opinion which you delivered last Monday you said you might—

(The Court) Well, I would like to hear right now what you have in mind, what points you felt were not covered by the opinion.

(Mr. Mundy) I am not really sure, Your Honor.

(The Court) Well, look them over and let me know. I don't want to do anything that will prevent a decision on appeal on the merits in the case, but I think the case is not as tortuous as the requested instructions would indicate.

(Mr. Mundy) Thank you, sir.

(Mr. Pierson) Well, of course, they say the question of evil motive.

(The Court) Well, I think it is a question of assuming an evil motive must be found, what is the nature of the evil motive which must be found, and I found a motive which I felt met the test, and I don't want to get into semantics how evil evil must be in order to be evil motive.

I found that the motive which I stated in my opinion was a sufficient motive to satisfy that requirement, if such a requirement existed, and I stand by that ruling.

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GOVERNMENT'S EXHIBIT NO. 1

Testimony of Arold H. Ripperger Taken in the Office of the Intelligence Division, Internal Revenue Service, Baltimore, Maryland, on Friday, November 18, 1955, at 2:00 p.m., in the Matter of His Income Tax Liability to the United States.

Present: Arold H. Ripperger, taxpayer.

For the Government: Thomas B. Carney, Group Supervisor, Peter B. Haspert, Special Agent, Helen Swain, Reporter.

(Questions were asked by Group Supervisor, Thomas B. Carney, and answers were given by Mr. Ripperger.)

Q. Mr. Ripperger, it is customary to take these statements under oath. Are you willing to answer under oath? A. Yes sir.

Q. Do you solemnly swear that the answers you are about to give to questions asked will be the truth, the whole truth, and nothing but the truth, so help you God? A. Yes sir.

Q. Mr. Ripperger, it becomes my duty to advise you that under the Constitution of the United States you have the right to refuse to answer any questions or make any statement which may tend to incriminate you under the laws of the United States, and to inform you that anything you say, or any evidence which you produce at this hearing, may be used against you in any proceeding, criminal or otherwise, which hereafter may be undertaken by the United States. Do you fully understand this? A. Yes sir.

Q. Would you please state your full name. A. Arold Henry Ripperger.

Q. What is your age, sir? A. Thirty-five.

Q. Were you born in Baltimore? A. Yes sir.

Q. At what time? A. March 8, 1920.

Q. Are you married? A. Yes sir.

Q. When were you married? A. January 1, 1940. In Mount Vernon Methodist Church.

Q. What was your wife's maiden name? A. Harriet C. Barkingham.

Q. Do you have any children? A. Three daughters.

Q. What are their names and ages? A. Harriet B., aged 14; Priscilla D., 12; and Deborah L., will be 5 in January.

Q. Where did you attend primary school? A. Do you want the numbers?

Q. Public School? A. Public Schools of Baltimore City.

Q. High School? A. Baltimore City College. Graduated in 1937 in June.

Q. Did you attend college? A. No sir.

Q. Did you attend law school? A. University of Baltimore Law School. Graduated in June 1940.

Q. Are you a member of the bar? A. Yes sir. The State of Maryland, Baltimore City, and Baltimore County Bars, but no bar associations.

Q. Do you have a card to practice before the Treasury Department? A. No sir, I don't.

Q. When were you admitted to the bar? A. I think it was September 1941.

Q. Have you been practicing law since that time? A. Not completely, sir, no.

Q. What have you done in the business field since 1941? A. In 1941 I was assistant underwriter in a public liability department at Maryland Casualty Company; in October of 1942, I took a position as an investigator in the rent control section of the Office of Price Administrations; immediately prior to that position, I was employed in the billing office for one month at the Western Electric Company, Point Breeze; in February 1942, I left the O. P. A. and became associated with the law firm of Rome, Rome & Hamburger, where I remained until July 31 — Wait a minute! I left the O. P. A. in February 1944, and I practiced law with Rome, Rome & Hamburger until July 31 of 1944, at which time I was inducted into the United States Navy and I served in the Navy; I think it was February 22, 1946 I was discharged.

Q. What were your duties in the Navy? A. Most of it was general duty. Specifically, from boot training I went to Chaplains' Training School, William and Mary College, Williamsburg, trained as Chaplain's Assistant. From that school I wasn't graduated, I was sent to Norfolk receiving

station where I spent approximately a month. Then I went to Camp Perry, Williamsburg, Virginia, where I spent approximately eight months — excuse me, that would be approximately five months. My duties there were clerical in nature, office work, making up — we had a utility and supply, they would say we would need twenty men and we would pull out the cards. From Camp Perry, I was sent for training at Rito Beach, Long Island, New York. I remained there three weeks, then went for further training to San Bruno, where we had training for a month, and then was sent to Japan where I worked for three weeks in a storage warehouse, and the balance of my time, up to discharge, which would be approximately three months, as Assistant to a Protestant Chaplain because there were two of us there.

Q. After your discharge from the Armed Services, would you describe your business activities from that time to date briefly? A. I would say I returned to the practice of law in March 1946, and since that time I have practiced with offices at 100 St. Paul Street until November 19, 1954; then I had my own office without any associate at 11 E. Lexington Street until January 31, 1955, since which time I have maintained my office at 503 Title Building, Baltimore 2, Maryland.

Q Since 1946 what have been your sources of income? A. From the practice of law and from positions in various churches as organist and choirmaster.

Q. Will you please name the churches for which you worked? A. St. Andrews Episcopal, formerly Chester and Preston Streets, now located on Loch Raven Boulevard just over the county line. That was until January 1949. In January 1949 until — I am not certain as to the exact date — it would be August or September of 1953, St. Thomas Episcopal Church, 31st Street and The Alemeda, and from that time until August or September of 1954 I was at the Cathedral Church of Incarnation, University Parkway and St. Paul Street. I have no position now.

Q. During the period for which you worked for these various churches, did the pastor or someone in authority give you a W-2 for your earnings? A. For all except the complete period at St. Thomas's. I would say it was at the very beginning of my retention there, they adopted the attitude that we weren't going to make any withholding. In all other cases, they did and I have the W-2's.

Q. Since 1946, has your wife been employed? A. Yes, Sturdifold Awning & Shade Company, Inc.; the present address is 2133 Maryland Avenue, Baltimore 18.

Q. What is the present condition of your health? A. My health is very good so far as I know.

Q. Have you ever received any gifts or inheritance since 1946? A. No sir.

Q. Mr. Ripperger, what was the last year you filed an income tax return? A. In 1949 for 1948.

Q. Did you file a return for the year 1950? A. No sir.

Q. For 1951? A. No sir.

Q. For 1952? A. No sir.

Q. For 1953? A. No sir

Q. For 1954? A. No sir.

Q. Did you ever file an estimated income tax return? A. No sir.

Q. Did you have sufficient income in the years 1949 to 1954, inclusive, to require the filing of a return? A. To require the filing of returns, and there would also be some tax liability.

Q. You feel there would be some income tax liability in those years? A. Yes.

Q. What is your reason for not filing for the years 1949 to 1954, inclusive? A. Mainly the fact that in the practice of law the work in my case has not been steady, and at the time when necessary to file returns and to pay the taxes,

I did not have the funds available for the payments, and I have been consistently looking for the development of the law practice to the point where I could clean up all of the obligations at once. The time in those years did not arrive according to my circumstances.

Q. Have you had any unusual expenditures, such as sickness? A. There have been no protracted instances. I had difficulty in 1951 when my fourth child was lost at birth. There again I wouldn't say that was an extensive amount.

Q. Have you ever assisted other taxpayers in the preparation of returns? A. Yes, I have.

Q. Frequently? A. Some cases almost annually; others, infrequently.

Q. During this time, did you think of your own problem of filing? A. Yes, I did, sir.

Q. And because of lack of funds you didn't file? A. That is the thing sir. I have never adopted or expected that theory of [limitations] would apply under any circumstances.

Q. In other words, it has always been your intention to file these returns and pay the tax? A. That is correct, sir. I might say that I have never run out on a bill in my life. As a matter of fact, I don't know in the period of years of law practice I have pleaded for anybody else the statute of limitations.

Q. Mr. Ripperger, it will be necessary for a special agent to compute your correct income for the years 1949 to 1954, inclusive. Would you be willing to turn over your books and records for examination? A. Absolutely.

Q. Would you be willing to make available to Mr. Haspert, your withholding earnings from that employment? A. That's right.

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DEFENDANT'S EXHIBIT 2-A

U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Baltimore 2, Maryland

November 14, 1955

In Replying Refer To:
I:SJM:jb

Mr. Arold H. Ripperger
Attorney at Law
100 St. Paul Street
Baltimore 2, Maryland

In re: Income Tax Returns for Years
1952, 1953 and 1954.

Dear Mr. Ripperger:

The Internal Revenue Service for the Baltimore District has no record of individual or joint income tax returns having been filed by you for the years 1952, 1953 and 1954 that bear the name and address shown above. It is possible that you have filed returns for these years from another address, or your returns may have been filed with a District Director of Internal Revenue at a place other than Baltimore, Maryland.

In order to facilitate further search for your returns, it is requested that you please answer the questions on the reverse side of this letter and immediately mail it to this office.

Your prompt reply will be appreciated, and it is important that it be addressed to the Internal Revenue Service, 327 Calvert Building, Baltimore 2, Maryland.

Very truly yours,

C. I. FOX

Acting District Director

DEFENDANT'S EXHIBIT NO. 2-B

U. S. TREASURY DEPARTMENT
Internal Revenue Service
District Director
Baltimore 2, Maryland
327 Calvert Building

June 4, 1956

Mr Arold H. Ripperger
Long Green Pike
Glen Arm, Maryland

Dear Sir:

The current investigation by the Intelligence Division of your income tax liability for the years 1949 to 1954, inclusive, is nearing completion.

Developments of the investigation indicate that you failed to file income tax returns during the years in question. Consideration is being given to a possible recommendation that criminal proceedings be instituted against you for your failure to file income tax returns for the years 1953 and 1954, inclusive.

In the circumstances, it is deemed appropriate to grant you a conference before final decision is made, at which time you may appear with counsel if you so desire or with any other person who may have knowledge of the facts in your case whom you wish to be present.

Accordingly, a conference has been set in this matter, to be held at 10:00 on Monday, June 11, 1956 at 327 Calvert Building, Baltimore, Maryland. You may at that time present any facts or evidence which you wish to have considered in connection with this matter.

You are requested to inform this office promptly whether it is your intention to appear for the proposed conference. It is important that your reply and any inquiries relating thereto should be addressed to District Director of Interna-

Revenue, Attention: Chief, Intelligence Division, 327 Calvert Building, Fayette and St. Paul Streets, Baltimore 2, Maryland.

Very truly yours,

HERMAN E. GREENLAND,
Herman E. Greenland,
Chief, Intelligence Division.

DEFENDANT'S EXHIBIT NO. 2-C

U. S. TREASURY DEPARTMENT
Internal Revenue Service
800 Widener Building

August 17, 1956.

CC:PHI:RC-E
LGW
PHI-531183

Arold H. Ripperger, Esquire
Long Green Road
Glen Arm, Maryland

Dear Mr. Ripperger:

Please be advised that this office is in receipt of reports recommending criminal prosecution against you for various violations of the Internal Revenue laws.

In accordance with the procedure established in this office, a conference has been scheduled for Monday, August 27, 1956 at 10:30 A.M. in order to permit you, if you so desire, to present any additional evidence or arguments which you feel this office should consider prior to reaching a decision herein. Please advise this office immediately whether or not you intend to take advantage of the above-scheduled conference.

It is important that any inquiry or reply be addressed to the attention of Attorney Leon G. Wigrizer, Internal Revenue Service, 800 Widener Building, Philadelphia 7, Pennsylvania. Telephone WAlnut 3-2400, extension 487.

Very truly yours,

(Signed) CECIL H. HAAS.

LGW

Cecil H Haas

Regional Counsel